

SUPREME COURT DENOUNCES EXCESSIVE FORMALISM WHILE ENFORCING ARBITRAL AWARDS

INTRODUCTION

The Supreme Court in a recent decision, *P.E.C. Limited v. Austbulk Shipping Sdn. Bhd.*¹ was called upon to consider whether (a) an application filed under section 47 of the Arbitration and Conciliation Act, 1996 ("Act") for enforcement of a foreign award would be maintainable if the applicant has failed to produce the arbitration agreement at the time of filing such application, and (b) if an unsigned Charter Party containing an arbitration agreement would render the arbitration agreement invalid.

The Court after considering various provisions of the Act, the New York Convention and the UNCITRAL Model Law, concluded that since the applicant in the present case had admittedly subsequently cured the defect, mere failure to file the arbitration agreement at the time of filing the enforcement application, would not render the application unmaintainable. The Court also ruled that there was no requirement for an arbitration agreement to be signed, and the arbitration agreement contained in the Charter Party in this case was valid and enforceable.

FACTUAL BACKGROUND

The Appellant in this case chartered a vessel from the Respondent for transport of certain goods under a Charter Party containing an arbitration agreement. Disputes arose between the parties, and the arbitration clause was invoked by the Respondent. Ultimately, the arbitrator passed an award for USD 150,362.18 along with interest in favour of the Respondent in London ("Foreign Award").

The Respondent thereafter filed an application for enforcement of the Foreign Award under section 47 of the Act before the Delhi High Court ("Application"). The Appellant opposed the application primarily on the ground that the Application was not maintainable since an authenticated copy of the arbitration agreement was not filed along with the Application in terms of section 47 of the Act. The High Court dismissed the Appellant's objections, and allowed the Application on the ground that there was substantial compliance with section 47 of the Act since the arbitration agreement was ultimately filed at a later stage of the enforcement proceedings.

Another important question determined by the Delhi High Court was regarding the existence of an arbitration agreement between the parties as the Charter Party was not signed by the Appellant. It analysed the correspondence exchanged between the parties and the relevant material placed on record and held that merely because the Charter Party was not signed by the Respondent, does not invalidate the arbitration agreement contained therein.

Aggrieved by the order of the High Court, the Appellant filed an appeal before the Supreme Court.

ISSUES AND FINDINGS

The following issues were considered by the Supreme Court:

1. Whether the Application is liable to be dismissed on the ground that it was not accompanied by the arbitration agreement?
2. Whether a Charter Party not signed by one of the parties would affect the validity and existence of the arbitration agreement in the Charter Party?

With regard to the first issue, the Court held in favour of the Respondent and affirmed the findings of the High Court. The Court held that the word 'shall' in section 47 of the Act, with reference to production of the arbitration agreement, ought to be read as 'may'. The Court referred to the object and purpose of the New York Convention i.e. to facilitate the enforcement of arbitral awards and held that excessive formalism in enforcement of arbitral awards ought to be deprecated. Since the Respondent in the present case had filed the arbitration agreement at a later stage of the enforcement proceedings, the requirement under section 47 of the Act had been satisfied.

The Court further held that an application for enforcement of a foreign award can only be rejected on the limited grounds set out under section 48 of the Act and that the said section did not include non-filing of an arbitration agreement at the time of presentation of the application as one of the grounds for its rejection.

With respect to the second issue, the Court noted that abundant material was examined by both the arbitrator and the High Court on this issue, and it was inclined to approve their conclusions. The Court held that "*the term 'agreement in writing' in Article II is very wide. An arbitral clause need not necessarily be found in a contract or an arbitral agreement. It can be included in the correspondence between the parties also.*" The Court noted that in the present case, the arbitration agreement was present in the Charter Party, which was also accepted by both arbitrator and High Court. In light of the same, the Court rejected the Appellant's contentions on the second issue.

CONCLUSION

This decision is clearly in keeping with the pro-arbitration stance being adopted by courts in India. It is fairly common for award-debtors to mount frivolous challenges to awards in an attempt to avoid liability and prolong disposal of enforcement applications. By reiterating that courts must avoid rigid adherence to procedural rules while enforcing awards, the Supreme Court has encouraged courts to adopt a pro-Award stance.

Disclaimer: The information provided in this update is intended for informational purposes only and does not constitute legal opinion or advice. Readers are requested to seek formal legal advice prior to acting upon any of the information provided herein. This update is not intended to address the circumstances of any particular individual or corporate body. There can be no assurance that the judicial/quasi-judicial authorities may not take a position contrary to the views mentioned herein.



ECONOMIC
LAWS
PRACTICE
ADVOCATES & SOLICITORS

MUMBAI | NEW DELHI | BENGALURU | AHMEDABAD | PUNE | CHENNAI

Email: elplaw@elp-in.com

© Economic Laws Practice 2018

¹ 2018 SCC Online SC 2549